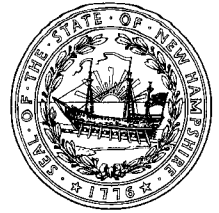




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

April 3, 2006

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Robert Kelly
d/b/a Seacoast Farms Compost Products, Inc.
59 Columbus Avenue
Exeter, NH 03833

Re: Administrative Order No. WMD 06-005

Dear Mr. Kelly:

Enclosed is Administrative Order No. WMD 06-005 issued this date to you as a result of inspections conducted on August 15, 2005, September 21, 2005, December 30, 2005 and January 27, 2006 and e-mail correspondence received from the Town of Fremont regarding odor complaints on September 2nd, 8th, 9th, 11th, 18th, and 21st in 2005 regarding your facility located on Shirkin Road in Fremont, New Hampshire.

Should you have any questions regarding this order, please contact Douglas Kemp at 271-2925 or me at 271-3899.

Sincerely,

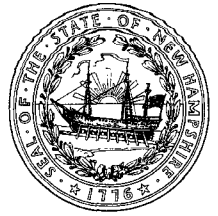
Paul L. Heirtzler, P.E., Esq., Administrator
Waste Management Programs
Department of Environmental Services

Certified Mail/RRR: 7000 0600 0023 9933 9818

cc: DB/FILE/ORDER
Gretchen R. Hamel, Legal Unit Administrator
Anthony P. Giunta, P.G., Director WMD
Public Information Coordinator, DES
Jennifer Patterson, Sr. Assistant Attorney General
Fremont Board of Selectmen
John Galloway



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Robert Kelly
59 Columbus Avenue
Exeter, NH 03833

Re: Compost Facility
Shirkin Road, Fremont, NH

ADMINISTRATIVE ORDER
No. WMD 06-005

April 3, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Robert Kelly pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Robert Kelly is an individual doing business as "Seacoast Farms Compost Products," having a mailing address of 59 Columbus Avenue, Exeter, NH 03833.

C. STATEMENTS OF FACTS AND LAW

1. RSA 149-M authorizes DES to regulate the management of solid waste in the State of New Hampshire. RSA 149-M:7 authorizes the Commissioner of DES to adopt rules to implement solid waste management standards. Pursuant to this authority, the Commissioner has adopted Env-Sw 100-300 and Env-Sw 400-2000 ("Solid Waste Rules").
2. Robert Kelly is the owner of a compost facility on Shirkin Road (the "Facility") in Fremont, New Hampshire
3. The Facility constitutes a "solid waste facility" as defined by RSA 149-M:4, IX.
4. DES issued Letter of Deficiency ("LOD") WMD 05-001 to Robert Kelly on January 14, 2005 for failure to operate the Facility in accordance with its operating plan and the Solid Waste Rules.
5. DES requested that Robert Kelly provide a statement certifying that the Facility can be managed in a manner that reasonably mitigates odors and other nuisances via the LOD.

6. The LOD gave Robert Kelly notice that DES believed he was violating Env-Wm 2705.01(d)(4) [now Env-Sw 1005.01(d)(4)] by failing to operate the Facility in a manner that controls odors.
7. In response to the LOD Robert Kelly sent a letter dated February 1, 2005, to DES stating that the Facility would "henceforth, be managed in a manner that reasonably mitigates odors and other nuisances."
8. According to Section II.C.1., of the April 2005 Facility Operations Manual, as revised (the "Manual"), "The loader shall also be used to keep aisle ways clear of excess compost material and standing water as is reasonably possible to promote drainage and minimize the formation of odors."
9. According to Section III.D., of the Manual, "Various aspects of the Shirkin Road site [the Facility] need to be maintained on a regular basis for good housekeeping and management practices. Specifically, drainage swales, roadways, and windrow aisles need to be kept clear of debris and built-up silt and organic materials."
10. According to Section V.C., of the Manual, "After turning compost windrows, the aisles shall be cleaned of excess compost to prevent siltation into the pad thus reducing muddy conditions."
11. According to Section V.D., Table 2 of the Manual, Facility operators are to "shut down operational area until upset can be isolated. If no solution readily apparent the area to be shut down until solution developed."
12. According to Section V.E., of the Manual, "If the cause of the odors appears to be from excessive pile moisture...the turning frequency will be increased to once every day for one week or until odors subside."
13. On August 15, 2005, DES staff observed that improvements to the compost pad had been made; however, ponding of water and excess compost was still present between a significant number of windrows.
14. According to e-mail correspondence sent by the Town of Fremont to DES, Robert Kelly was informed of odor complaints on at least six occasions including on September 2nd, 8th, 9th, 11th, 18th, and 21st in 2005. Robert Kelly did not inform DES of the odor complaints or any actions taken as a result of the odor complaints.
15. On September 21, 2005, DES staff visited the Facility and observed that a significant number of access ways between windrows located in the western and southern areas of the pad contained ponded water and excessive compost and/or debris. Facility operators were informed of the ponding and presence of excessive compost or debris in the access ways between the windrows. Strong odors were detected during grinding operations. Facility operators were observed to be making no efforts to mitigate the odors caused during the grinding operations.

16. On October 5, 2005, DES issued a letter to Robert Kelly stating that a significant number of access ways between windrows contained ponded water and or excessive amounts of compost and debris at the Facility. The letter stated that poor drainage and excessive material between the windrows did not meet the "as is reasonably possible" test for maintaining the compost pad as stated in the Facility's operating plan.

17. The Town of Fremont submitted an e-mail to DES on December 6, 2005, describing an inspection of the Facility by the Town earlier that same day. According to the e-mail, operators were actively grinding waste material, strong odors were detected, and there was no attempt by Facility operators to mitigate the odors.

18. On December 30, 2005, DES staff visited the Facility and observed that a significant number of access ways between windrows located on the western and southern areas of the pad contained ponded water and excessive quantities of compost and/or debris. Also, two windrows located along the southern and southwestern limits of the pad appeared to be blocking surface drainage from along a significant length of the pad in these directions.

19. On January 27, 2006, DES staff inspected the Facility again and observed that a significant number of the access ways between and around windrows located on the pad's southern and western areas were covered with ponded water, contained significant amounts of compost debris and were heavily rutted, preventing proper drainage off those areas of the pad. Drainage off the cap was also blocked by the presence of two windrow-shaped stockpiles located along significant lengths of the southern and southwestern limits of the pad.

D. DETERMINATION OF VIOLATIONS

1. Robert Kelly has violated Env-Sw 404.05(b)(2) for failing to prohibit precipitation and surface drainage from collecting in the stockpile area of the Facility.
2. Robert Kelly has violated Env-Sw 1005.01(d)(4) for failing to operate the Facility in a manner that controls odors.
3. Robert Kelly has violated Env-Wm 1005.09(d) for failing to report to the DES, in writing, complaints made by abutters and the town regarding operating conditions involving recurring odor problems at the Facility.
4. Robert Kelly has violated Env-Wm 1005.01(e) for failing to regularly inspect, monitor and maintain the Facility to assure compliance with its operating plan, permit, and the Solid Waste Rules.
5. Robert Kelly has violated Env-Wm 1005.01(f) for failing to execute Facility repairs and correct, abate, and remediate Facility operating problems in a timely manner and as directed by DES in conformance with the Solid Waste Rules.

E. ORDER

Based on the above findings, DES hereby orders Robert Kelly as follows:

1. **Immediately** cease accepting all compost materials.
2. **Within 7 days** of the date of this Order, submit all temperature and moisture logs, and windrow turning data for the year 2005 and January 2006 to DES. The logs must identify from which windrow the data was collected, the date and time of day when the data was collected, and identify when each windrow was turned.
3. **Within 15 days** of the date of this Order, submit a written report to DES on the volume, in cubic yards, of each windrow on the compost pad and a site plan accurately depicting the location and dimensions of each windrow on the pad as of the date of this Order.
4. **Within 30 days** of the date of this Order, submit a written report to DES containing a proposal to reduce the existing compost volume provided in the report required by the preceding paragraph and reduce the area of the pad used for all compost related activities. The report should also include changes to the existing operations plan to reflect the reduced compost volume, reduced area of the pad for all compost activities, dates when grinding operations are to be conducted and how Facility operators will manage all future grinding operations to minimize odors, and new language indicating when and how the DES is to be notified of complaints.
5. **Within 30 days** of the date of this Order, submit a revised compost pad plan (the "Plan"). The Plan is to include; proposed set back distances from the pad's southern, southwestern, and western limits, the installation of markers to define and limit all compost activities within the reduced area of the pad, and the locations for each new windrow and grinding activity within the reduced pad area.
6. There shall be no expansion of the current limits of the pad or use of areas off the pad for the purposes of composting.
7. No compost material shall be accepted by the Facility until such time as the information required in Paragraphs E.2 through E.4 of this Order has been submitted to DES and the plan required by Paragraph E.5 of this Order has been approved by the DES.
8. No increase in the volume of compost material or increase in the number of windrows beyond those approved in the Plan shall be allowed until such time as Facility operations have demonstrated compliance with the Facility's approved revised operations plan, permit, and the Solid Waste Rules.

9. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

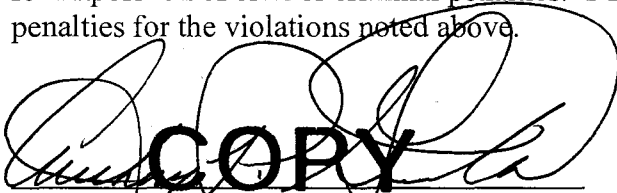
Douglas Kemp
Department of Environmental Services
Solid Waste Management Bureau, Solid Waste Compliance Section
Post Office Box 95, Concord, NH 03302-0095
Telephone: (603) 271-2925
Fax: (603) 271-3456
E-mail: dkemp@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Robert Kelly of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M provides for civil and criminal penalties and administrative fines for violations of the statute or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 149-M:15 provides for civil forfeitures of up to \$25,000 for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further action against Robert Kelly, including revocation of the permit and/or referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. DES reserves the right to pursue administrative penalties for the violations noted above.



COPY

Anthony P. Giunta, P. G., Director
Waste Management Division



COPY

Michael P. Nolin, Commissioner

Certified Mail/RRR: 7000 0600 0023 9933 9818

cc: Gretchen Hamel, DES Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Town of Fremont
John Galloway
File